





MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES

STATE DEPARTMENT OF ENVIRONMENT

Sound Chemicals Management Mainstreaming and UPOPs Reduction

WORKSHOP ON POLICY GAP ANALYSIS HELD KYAKA HOTEL MACHAKOS

 29^{TH} TO 30^{TH} AUGUST 2017

1.0 BACKGROUND

The importance of the sound management of chemicals for the protection of human health and the environment, and therefore for sustainable development, has been recognized on a number of subsequent occasions, including by heads of State and Government and high-level representatives at the United Nations Conference on Sustainable Development, held in Rio de Janeiro in June 2012. In the outcome document of the Conference, entitled "The future we want",b they reaffirmed the aim to achieve, by 2020, the sound management of chemicals throughout their life cycle and of hazardous waste in ways that lead to minimization of significant adverse effects on human health and the environment, as set out in the Johannesburg Plan of Implementation (see appendix B). The United Nations Environment Assembly, in its resolution 1/5, welcomed the important contribution of the Strategic Approach in facilitating action by all relevant stakeholders towards the sound management of chemicals and waste, and emphasized the need for continued and strengthened multisectoral and multi-stakeholder involvement as well as the need for continued strengthening of the Strategic Approach.

1.1 Current situation

Legal provisions on Sound Management of Chemicals and Waste in Kenya are established under a number of regulations among which the most relevant are the Environmental Management and Coordination Act, the Public Health Act, the Waste Management Regulations, 2006 (Legal Notice No.121), the Pest Control Products Act, cap. 346, the Fertilizer and Animal Foodstuff Act, cap 345, the Controlled Substances Regulations (dealing with ODSs), 2007 (Legal Notice No.73 of 2007), the Drug and Chemical substances Act, as well other regulations of more wider application like the Energy Act and Petroleum Acts. Most of these regulations need to be amended to ensure they address the MEAs related to chemicals and waste, with special reference to the Stockholm Convention, Rotterdam Convention, the Minamata Convention, the Basel Convention and the other conventions signed or ratified by the country. The environmental regulatory system currently in place does not provide a an integrated and consistent framework for the management of chemicals and waste as well as chemical pollution in the Country.

Guided by the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action, the Strategic Approach provides a policy framework to support efforts for achieving the World Summit goal. It complements the international chemicals and waste framework by including existing multilateral environmental agreements and addressing the need for and importance of comprehensive national chemicals management frameworks

Nema is currently reviewing the draft chemicals regulations. It was noted that the regulations only addressed industrial chemicals. The Mainstreaming Sound Chemicals Management and UPOPs Project is keen to have the provisions of MEAs included in the Chemicals regulations and has facilitated NEMA to hold two chemicals regulation review workshops for the taskforce.

The main objective of this workshop therefore is to identify the gaps of the other chemicals of concern not addressed in the chemicals regulations.

2. POLICY FRAMEWORK – INTERNATIONAL AND NATIONAL – MR. FRANCIS KIHUMBA

Mr. Kihumba described a policy as a set of principles and procedures addressing a broad range of chemicals issues. The Chemicals Policy therefore is a long-term, overarching tool to guide Kenya's plan for sound chemicals management. It is aimed therefore to be a national scheme for action to address sound chemicals management and adopted at the highest level.

2.1 What the Draft Chemicals Policy for Kenya Contains;

Several of the SAICM activities, including those that:

- Address matters of policy integration in consideration of life-cycle issues
- Strengthen policy, law and regulatory frameworks and compliance promotion and enforcement
- Address training needed to develop capacity in legislative approaches, policy formulation, analysis and management

This process was carried out in 2010-2011. A SAICM Committee to draft the national policy was formed from a multi-sectoral national platform for chemicals management supervised policy development. The committee ensured significant stakeholder involvement and conducted awareness raising parallel to endorsement of the policy to obtain stakeholder support and facilitated dissemination and agreement of its principles. The development of the draft chemicals policy took into consideration the Kenya National Policy on Environment and Development, 1999.

2.2 Key principles to be considered from the Draft

- i. Responsibility for chemical safety should be shared by all sectors
- ii. Chemicals management issues should be integrated into development strategies
- iii. Priorities should be set
- iv. Should be based on a life-cycle approach
- v. Prevention should be emphasized
- vi. A precautionary approach should be adopted
- vii. A cost-benefit analysis, as well as a risk assessment, which should be undertaken in order to ensure informed decision-making was not undertaken
- viii. Polluter-pays principle is applied
- ix. Financial considerations and implementation mechanisms

3. GUIDANCE DOCUMENTS – MR. FRANCIS KIHUMBA

3.1 STRENGTHENING NATIONAL GOVERNANCE STRUCTURE: INTERMINISTERIAL COORDINATION

3.1.1. Introduction

• Governmental actors often operate on a sectoral basis (e.g. under their own, separate legislation) and thus may not be accustomed to working together and sharing information

- Other government bodies less directly involved in chemicals activities may not see a clear link between their activities and sound chemicals management
- Several orders of government—e.g. federal, provincial, and local governments—also typically share responsibilities (though often without formal collaboration) for the implementation of chemicals management programmes, laws, and policies
- Effective coordination means that all those involved are familiar with each others' main chemicals-related activities, priorities, and positions, and the underlying reasons for each
- Should result in all stakeholders using that information to make better quality and more strategic decisions on chemicals issues

3.1.2 International recommendations

SAICM OPS: Para. 23. "To sustain an integrated approach to managing chemicals, each Government should establish arrangements for implementing the Strategic Approach on an interministerial or inter-institutional basis so that all concerned national departmental and stakeholder interests are represented and all relevant substantive areas are addressed

3.1.3 Possible Benefits

Benefits identified by country experiences and international discussions include:

- common positions on issues are identified and reinforced, and can thus be presented more strongly
 - to decision-makers
- synergies are created—work can take place in collaboration instead of in isolation, resulting in additional benefits to both (or several) parties
- duplication of efforts is avoided where possible, freeing up scarce resources for other priority issues
- gaps in chemicals management are identified
- understanding of divergent issues is increased, and thus the potential for misunderstanding is decreased

3.1.4 Challenges to interministerial coordination may include:

- Conflicting or competing mandates
- Poor inter- and intra-ministerial communication
- Gaps in expertise
- A lack of resources
- Differing priorities given to chemicals issues between particular ministries

3.1.5 Possible Approaches

Establishing linkages:

- If a coordination mechanisms exists, consider including SAICM-related issues
- Where such a mechanism doesn't exist, consider establishing one as part of national SAICM activities
- Also consider linking SAICM implementation activities to other on-going processes for chemicals management or broader national frameworks (e.g. on environment, health issues)

- Coordination mechanisms often have a defined relationship with existing committees (such as a pesticides registration committee, policy formulation committee, or PIC decision-making task force)
- For most issues (except, for example, where policies are being developed government-wide through an agreed process), each individual committee usually maintains its own mandate and decision-making power—contributing to the integrity of the whole "network" and adding value to its own work

4. SAICM OVERALL ORIENTATION AND GUIDE TO SOUND CHEMICALS MANAGEMENT

While it is recognized that countries are faced with different challenges and have different capacities, it is critical that all the 11 elements are addressed at the national and regional levels in order to achieve sound chemicals management. The 11 basic elements can support stakeholders to assess progress towards short-term and medium-term measurable steps at the national level; guide regional delivery; set national priorities for achieving the 2020 goal; and forge links to the sustainable development goals. The Overarching Policy Strategy and the Global Plan of Action together remain a major resource for Strategic Approach stakeholders to develop their priority activities, and should always be taken into account.

The aim of the overall orientation and guidance is to provide direction and identify approaches for all Strategic Approach stakeholders towards facilitating the achievement of the 2020 goal of sound chemicals management, including some concrete elements required at the national level to achieve sound chemicals management to support the implementation of the Overarching Policy Strategy.

The following set of 11 basic elements recognized as critical at the national and regional levels to the attainment of sound chemicals and waste management were elaborated:

- 1. Legal frameworks that address the life cycle of chemicals and waste;
- 2. Relevant enforcement and compliance mechanisms;
- 3. Implementation of chemicals and waste-related multilateral environmental agreements, as well as health, labour and other relevant conventions and voluntary mechanisms;
- 4. Strong institutional frameworks and coordination mechanisms among relevant stakeholders;
- 5. Collection and systems for the transparent sharing of relevant data and information among all relevant stakeholders using a life cycle approach, such as the implementation of the Globally Harmonized System of Classification and Labelling of Chemicals;
- 6. Industry participation and defined responsibility across the life cycle, including cost recovery policies and systems as well as the incorporation of sound chemicals management into corporate policies and practices;
- 7. Inclusion of the sound management of chemicals and waste in national health, labour, social, environment and economic budgeting processes and development plans;
- 8. Chemicals risk assessment and risk reduction through the use of best practices;

- 9. Strengthened capacity to deal with chemicals accidents, including institutional-strengthening for poison centres;
- 10. Monitoring and assessing the impacts of chemicals on health and the environment;
- 11. Development and promotion of environmentally sound and safer alternatives.

Participants were invited to make remarks on what their institutions were working on in relation to the chemicals management in the country.

5. REPORTS ON INSTITUTIONAL POLICIES

5.1 Ministry of Environment and Natural Resources – National Environmental Policy, Sessional Paper No.10 2014 – Presented by Mr. Wahome King'uru

The policy formulation process started in 2007 but slowed down towards the end of 2008 after thorough stakeholder consultations. The promulgation of The Constitution of Kenya 2010 and the emergence of issues like climate change brought a new impetus not only to align the policy with the Constitution but also to address such emerging issues.

A wide range of individuals and institutions in the private sector, academia, civil society and government agencies participated in the process. The Policy Paper recognizes chemicals as an important contributor to the national development across all sectors. Section 5.7 addresses chemicals and waste, also under section 6.0 on Environmental Health and Quality touches on various aspects of chemicals. (The National Environment Policy, Sessional Paper No.10 is attached as appendix 3).

5.1.1 Participants comments on the National Environmental Policy

- 1. The Policy has not integrated the Multilateral Environmental Agreements.
- 2. Gender issues have not been highlighted.
- 3. Under the section on air quality, it has omitted emphasizing on open burning and its implications.
- 4. It was noted that there needs to be a framework on transferring information to policy makers. Policies should have scientific backing.
- 5. Need to have environmental issues incorporated in education curriculum from lower grade to university level.
- 6. Co-financing aspect in the policy under the resource mobilization section has been omitted.

Mr. Kihumba informed that the project can support an activity to review and update the Policy Paper.

5.2 Agrochemicals Association of Kenya (AAK)

It is under an international association of manufacturers, distributors and retailers of agricultural products. In Kenya it is under the flagship name of Croplife Kenya. They deal in;

- Crop protection, products, regulatory, stewardship and anticounterfeit.
- Plant bio-technology from development, manufacture, distribution, use and disposal.

- Life-cycle approach to product management maximizing benefits and minimizing risk of the products.
- Development and manufacture of products is done overseas. Locally they deal in transportation, storage, distribution and disposal.

AAK undertakes trainings for stakeholders on product safe use, resistance management, disposal of containers and handling of obsolete chemicals. Obsolete chemicals are collected from distributors and taken for incineration at ECCL incineration facility in Stony Athi at a cost of Kshs 75/= per kg. Large quantities are exported under the Basel Convention for proper management.

Information on development of the products are used for registration of products in Kenya. This is what guides the legislation on rejection/approval of product. AAK shares their information and data collected with PCPB for policy development.

5.2.1 AAK suggestion

- 1. ECCL should be upgraded on standards and emissions. The facility should be developed to dispose all the obsolete chemicals.
- 2. Approved landfills for disposal of obsolete chemicals/pesticides that cannot be disposed by incineration.

5.3 Pest Control Products Board (PCPB)

This was established under an Act of Parliament in 1982. The existing Act is being revised is at an advanced stage.

The mandate of PCPB is monitoring and surveillance of effects of products on the environment. They have finalized domestication of GHS and developed a handbook on registered pesticides. This information is on the PCPB website for public contribution.

5.3.1 PCPB suggestion

- 1. There is a need for sensitization of the chemical labeling to the users and colour codes.
- 2. Uniform standard of handling chemicals globally through GHS
- 3. A set level of education of persons retailing pesticides/agrochemicals to ensure safe use.

5.4 Kenya Bureau of Standards (KEBS)

This is the institute mandated in developing standards of products.

- i. In collaboration with PCPB and AAK they have domesticated the GHS and standards for pestides.. These are uploaded on KEBS website.
- ii. Have standards on toys indicating the acceptable limits for mercury
- iii. Allow importation of industrial chemicals under the Prior Informed Consent (PIC)

Policy on Industrial chemicals, 2010 is currently under review.

5.5 – Center for Environmental Justice and Advocacy (CEJAD)

This is an NGO dealing with issues related to chemicals that affect the environment and human health. Recent activities have been on Mercury, Lead and POPs found in children's toys.

Activities undertaken under CEJAD;

- 1. IPEN/CEJAD study on Economic implications of mercury exposure in the context of the global mercury treaty: Hair mercury levels and estimated lost economic productivity in Kenya. Samples were taken at ASGM site in Migori.
 - Study estimates suggest that a large economic burden could be avoided by timely implementation of measures to prevent mercury exposures.
- 2. Undertook projects on mercury added products phase out in Kenya, Dental amalgam, eliminating lead in paints and POPs listed in annex SCCPs. Key findings were;
 - There is no specific Mercury added products phase out in legislations
 - Need for follow up on the review of waste management regulations
 - Translating the lead paint standards in the chemicals regulations to 90ppm limits
 - Need for Inclusion of POPs chemicals in the legislations

5.5.1 Suggested areas of cooperation

- i. Communication activities to increase public information and awareness on chemicals, and more so in easily understandable ways
- ii. Stakeholders sensitization partnership to conduct sensitization
- iii. Promoting of chemicals/mercury free alternatives through pilot and demonstration projects

5.6 Kenya Chemical Society (KCS)

KCS is a **Non-Political/Not for profit** Scientific and Professional Society for Chemists in Kenya. Registered with the Registrar of Societies (GoK) on 19th Sept 1991, it is governed by code of ethics which members adhere to. The society's objectives are;

- i. To promote advancement of chemical sciences and technology in Kenya
- ii. To create a network for chemists and allied professionals in Kenya to exchange and share ideas
- iii. To encourage advanced training and research in Chemistry within Kenya and beyond
- iv. To promote the welfare of chemists in Kenya
- v. To institute and maintain professional standards amongst its members (code of conduct)
- vi. To promote chemical safety and security in Kenya

The society has undertaken a Chemicals Safety and Security Program that endeared to;

- a) Help establish a safe and secure workplace.
- b) Help safeguard the environment.
- c) Prevent/reduce release of hazardous chemicals and operations.
- d) Prevent/reduce exposure to staff.

- e) Reduce stress.
- f) Enhance community relations.
- g) Comply with regulations.
- h) Improve response and Crisis management

5.6.1 The Chemical security and safety measures in Kenyan laboratories are;

- Manual Inventory of chemicals
- Manual access Control of the labs and chemical storage
- Usage of staff identification card
- Use of PPE
- Operational practices
- Engineering controls

5.6.2 Security and safety vulnerability areas identified;

- Uncontrolled access to chemical stores and laboratory working area.
- · Lack of advanced inventory management system
- Low level of security awareness among the staff the laboratory
- Inadequate tracking of procured chemicals in the laboratory.
- Improper guidelines of the laboratory waste management
- Improper use of PPE

5.6.3 Gaps identified at the national level on sound chemicals management;

- No curriculum on Chemicals Safety and Security
- Lack of concerted efforts by stake holders eg NEMA, PCBs etc
- Lack of Clear regulation and Policy on Chemicals of Concern
- Lack of M & E on life cycle: Use & Disposal Chemicals of Concern
- Lack of National Inventory on all Chemicals of Concern and stockpiles of chemicals held at institutions to avoid chemicals landing in illegal hands.
- No policy document for chemicals of concern
- Poor information sharing between partner institutions on the policies developed.

5.7 Directorate of Occupational Safety and Health Services (DOSHS)

This is a Directorate under the Ministry of Labour. Governed by the Occupation Safety and Health Act, 2007